IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Bachu Singh Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.145/2005)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 13-1-2005 in Sessions Case No.210/2001 (121/99) passed by Sh. P.D. Gupta, RHJS, Additional Sessions Judge (Fast Track) Hindaun City District Karauli.

2. Mukesh Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.877/2002)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 3-7-2002 in Sessions Case No.210/2001 (121/99) passed by Sh. Prithvi Raj, RHJS, Additional Sessions Judge (Fast Track) Hindaun City District Karauli.

Date of Judgment: March 07, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Rajesh Goswami] for the appellants.
Mr. Virendra Singh]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Since both these appeals arise out of the same incident, I proceed to decide them by a common judgment.

Challenge in these appeals is to the judgments dated January 13, 2005 and July 3, 2002 of learned Additional Sessions Judge (Fast Track) Hindaun City whereby the appellants Bachu Singh and Mukesh were convicted and sentenced as under:-

Bachu Singh
U/s.376 (1) IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for three months.

U/s.366 IPC:

To suffer rigorous imprisonment for three years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for three months.

The substantive sentences were ordered to run concurrently.

Mukesh
U/s.366 IPC:

To suffer rigorous imprisonment for two years and fine of Rs.2000/-, in default to further suffer simple imprisonment for three months.

2. It is the prosecution case that informant Dinesh submitted a written report (Ex.P-1) on March 20, 1998 at Police Station Todabhim with the averments that his daughter Usha (fictitious name) aged 14 years on March 18, 1998 around 1 PM while returning to her school was forcibly taken by the appellant Bachu to the low land beneath mountain where Bachu committed rape on her. Appellant Mukesh, younger brother of Bachu, also made attempt to ravish her. On that report a case was registered and investigation commenced. Site was inspected, statements of witnesses under section 161 CrPC were recorded and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Hindaun City. Charges under sections 366, 376, 376/511, 452 and 323 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 10 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in

defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Learned counsel for the appellant canvassed that there was unexplained delay in lodging the report. The incident took place at 1 PM on March 18, 1998 but the report was lodged on March 20, 1998. Since there was previous enmity between the parties the delay in lodging the report demolishes the prosecution case.

4. Learned Public Prosecutor however supported the impugned judgment and urged that testimony of prosecutrix was rightly believed by the trial court.

5. Having scanned the material on record and considering the statements of the prosecution witnesses I find the factual situation as under:-

(a) The prosecutrix on the date of incident was of the age of 15 to 16 years.
(b) Dr. Kunti Asnani (Pw.10), who examined the prosecutrix on March 20, 1998 found injuries on her chest and thighs. Hymen of prosecutrix was found ruptured.
(c) The prosecutrix (Pw.1) in the cross examination admitted that the ground floor of their house was occupied by the accused.
(d) No specific allegation has been levelled against appellant Mukesh.

6. The prosecution is able to establish that it was appellant Bachu Singh who committed offence with the prosecutrix. Case against appellant Mukesh could not however proved beyond reasonable doubt.

7. Evidently appellant Bachu Singh was 23 years of age on the date of offence and the offence appears to have been committed by him in his youthful exuberance. The prosecutrix and the appellant Bachu Singh on the date of incident were residing in one house and this possibility cannot be ruled out they had developed intimacy. The Age of prosecutrix according to opinion of the Medical Board was between 15 to 16 years. These facts warrant imposition of lesser sentence.

8. In State of Rajasthan Vs. Ram Narain (1996)8 SCC 64, the age of the prosecutrix was between 15 to 17 years and the age of accused was 18 years. Learned Sessions Judge convicted the accused under sections 376, 366 and 342 IPC and sentenced him to undergo imprisonment for seven years, five years and one year respectively and imposed a fine of Rs.200/-. On appeal the High Court reduced the sentence to the period already undergone, namely one and a half months. The Apex Court set aside the judgment of High Court and observed as under:- (Para 7)

> "The question is: Whether the High Court is right in reducing the sentence to the period already undergone, i.e., one and a half months? We think that the High Court has committed grave error of law in reducing the sentence. Therefore the judgment of High Court is set aside. The conviction of the first accused is upheld and he is sentenced to undergo rigorous imprisonment for 5 years under section 376 IPC."

9. In Ummaid Nath Vs. State of Rajasthan (1999(2) RCC 1383)

wherein the age of the prosecutrix was found below 16 years at the time of occurrence and the prosecutrix went with the accused willingly and thus the sentence of ten years rigorous imprisonment was reduced to five years rigorous imprisonment.

10. For these reasons, I dispose of instant appeals in the following terms:-

(i) I partly allow the appeal of appellant Bachu Singh and while maintaining his conviction under section 376(1) IPC, I reduce the sentence from 7 years rigorous imprisonment to 5 years rigorous imprisonment and fine of Rs.1000/- in default to suffer three months rigorous imprisonment. The conviction and sentence awarded to him under section 366 IPC are however maintained.

(ii) I allow the appeal of appellant Mukesh and acquit him of the charge under section 366 IPC. Appellant Mukesh is on bail, he need not surrender and his bail bonds stand discharged.

(iii) The impugned judgments of learned trial courts stand modified as indicated above.

(Shiv Kumar Sharma)J.

arn/